

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4304 of 1999
and
Special Civil Application No. 4720 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

DEVIBEN SURAJMAL KHATRI

Versus

STATE OF GUJARAT

Appearance:

MR BS BRAHMBHATT for Petitioner in both petitions
Mrs. Manisha Lavkumar, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.M.KAPADIA
Date of decision: 22/11/1999

COMMON ORAL JUDGEMENT

1. This judgment shall govern disposal of the above mentioned two petitions. Since the questions involved in both the petitions are identical, they were heard together and disposed of by this common judgment.
2. Petitioners in both the petitions were retail dealer of kerosene since long at village Dhundhiyavadi

under the license granted by State of Gujarat. When an inspection was made by the authority on 8.9.1997 at the check post of Amirgadh, 14 barrel including 3080 litres of blue kerosene were found in tempo No. GJ-8-U-3619. The authorities trapped six persons along with the said tempo and its driver. Petitioner of Special Civil Application No.4720 of 1999 who happens to be the husband of petitioner of Special Civil Application No. 4304 of 1999 was also travelling in the said tempo. Mamlatdar, Palanpur, immediately on the very next day passed an order and cancelled the license of the petitioners for 90 days and issued show cause notice on 29.9.1997 to show cause as to why the license of the petitioners should not be cancelled, on the grounds mentioned in the show cause notice. The Mamlatdar, Palanpur also recorded statements of the six persons travelling in the tempo along with the driver. According to the petitioners, Jagadish Lalchand Khatri and Devilal Hemaji Khatri who were the actual owners of the said 14 barrels have committed offence on the very same day at the time of inspection and they also gave address from where they purchased the kerosene and wanted to sell it in open market. Therefore, it is the say of the petitioners that they do not know anything about the said kerosene. According to them, neither they are connected with the said persons nor with the kerosene.

2.1. The petitioners tendered their reply dated 30.9.1997 against the show cause notice and denied allegations made therein. The Mamlatdar, Palanpur, after considering their reply, cancelled authorization vide order dated 31.1.1998.

2.2. Both the petitioners preferred appeal before the District Collector, Banaskantha at Palanpur and the District Collector dismissed the appeal vide order dated 23.6.1998.

2.3. Aggrieved thereby both the petitioners filed Revision Application before the State Government and the said revision applications also came to be rejected by order dated 15.5.1999 passed by the Deputy Secretary, Food & Civil Supplies Department by confirming the order of cancellation of authorization of fair price shops of both the petitioners.

2.4. Both the petitioners have filed these petitions challenging the order dated 31.1.1998 recorded by the Mamlatdar, Palanpur, which has been confirmed in appeal by the Collector, Banaskantha at Palanpur and in Revision by the Deputy Secretary, Food & Civil Supplies

Department, Sachivalaya, Gandhinagar.

3. Learned advocate Mr. B.S. Brahmbhatt for the petitioners has contended that the Mamlatdar has recorded the order without considering the reply to the show cause notice wherein it was specifically and categorically mentioned that travelling of petitioner of Special Civil Application No. 4720 of 1999 in the said tempo wherein 14 barrels including 3080 litres of blue kerosene were found was merely a coincidence as two persons i.e., Jagdish Lalchand Khatri and Devilal Hemaji Khatri who were travelling in the said tempo were the actual owners of said 14 barrels and they have committed the offence and they have also stated before the Mamlatdar from where they have purchased the kerosene and where they wanted to sell it. Therefore, both the petitioners have nothing to do with the said trap and hence the order recorded by the Mamlatdar which has been confirmed by the Collector and Deputy Secretary is against the principles of natural justice and the said order is liable to be set aside in exercise of powers of Article 226 of the Constitution of India.

4. In support of the aforesaid contention, he has pressed into service an unreportable judgment in the case of Narbheram Ramjibhai v. State of Gujarat, reported in 1987 GLH (UJ) 9 and the judgment in the case of Kiran Oil Industries v. District Collector, Jamnagar, reported in 1996 (1) GLH 614. In both these judgments this Court has held that if no material on record which could have justified an inference that any contravention had taken place in respect of essential commodities which were found in possession of the petitioner, confiscation order in respect of those articles was improper and bad.

5. In counter submission, learned A.G.P. Mrs. Manisha Lavkumar has drawn my attention to the three speaking orders passed by the authorities below and the show cause notice at Annexure 'B' wherein the alleged wrong committed by the petitioners has been mentioned in details and considering the grounds on which the aforesaid order was passed it cannot be said that the authorities have recorded the orders without considering the reply to show cause notice and without giving opportunity of hearing to the petitioners.

6. I have given my anxious considered thought to the rival contentions of the learned advocates for the parties and I am of the opinion that the judgments relied upon by learned advocate Mr. Brahmbhatt for the petitioners are of no help or assistance to him since in

both the cases the order of confiscation came to be challenged on the ground that the defence raised by the petitioners have not been considered by the authorities before recording the order of confiscation and in show cause notice no grounds were mentioned. So far as the instant case is concerned, it is a case of cancellation of authorization. On perusal of the show cause notice at Annexure 'B' it has been specifically mentioned in the statement of Jagdish Lalchand Khatri and Devilal Hemaji Khatri and during the search made at both the shops 115 litres of kerosene were found sold by preparing bogus bills and in the said notice it has also been mentioned that the petitioner Roshanlal has given false explanation with respect to his presence at odd hours in the tempo. Therefore, ultimately the Mamlatdar came to the conclusion that both the petitioners have indulged in blackmarketing activity and they have committed breach of the conditions on which authorization was granted and, therefore, ultimately cancelled the authorization issued in their favour. The said order is confirmed in appeal by the Collector by passing speaking order and the Deputy Secretary has also observed in Revision that the persons travelling in the tempo were unable to give any explanation from where they have purchased the kerosene and the explanation offered by the persons including both the petitioners are inconsistent with the statements of each others. Therefore, he has also rightly confirmed the order of cancellation of authorization.

7. In the case of Khanna Improvement Trust v. Land Acquisition Tribunal and others, reported in (1995) 2 SCC 557, the Honourable Supreme Court has held that High Court must confine itself to correcting any error of jurisdiction committed by the Tribunal. It cannot assume suo motu jurisdiction of appellate court and correct every mistake assumed to have been committed by the Tribunal.

8. In the case of H.B. Gandhi v. Gopi Nath & Sons, reported in 1992 Supp. (2) SCC 312, the Honourable Apex Court has held that it is a review of decision making process and not of the decision itself. Court cannot assume appellate jurisdiction and reappraise the primary or perceptible facts found by the fact-finding authority.

9. In view of the aforesaid discussion and the principles of law enunciated by the pronouncements of the Honourable Supreme Court, I am of the opinion that all the three authorities below have committed no error of fact or law in recording the order of cancellation of

authorization of fair-price shops and, therefore, it is not open for this court to interfere with the said decision under Article 226 of the Constitution of India.

10. In the result, both the petitions are liable to be dismissed and hence they are accordingly dismissed, however, with no order as to costs. Rule issued in both the petitions is discharged.

(karan)